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Chair: Ms. Mejía Vélez (Colombia)

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The meeting was called to order at 10 a.m.

Agenda item 68: Promotion and protection of human rights (A/71/40)

(a) Implementation of human rights instruments (A/71/44, A/71/48, A/71/118, A/71/268, A/71/270, A/71/272, A/71/289, A/71/298 and A/71/341)

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (A/71/36)

1. **Mr. Salama** (Director, Human Rights Treaty Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)), introducing the report of the Secretary-General on the status of the human rights treaty body system, said that the statistics included in the supplementary information document showed that there had been an increase in treaty ratifications, individual communications and urgent action requests. The Secretary-General welcomed the positive reaction to the capacity-building programme established and implemented by OHCHR to support States in their engagement with the treaty bodies. While the overall implementation of General Assembly resolution 68/268 was positive, the harmonization of working methods was progressing with varying results, and all stakeholders must do more work to elevate the treaty body system to the required level of efficiency and impact. The report reviewed the meeting time necessary to allow the treaty bodies to cope with their workload in the biennium 2018-2019 and identified immediate needs for 2017, on which the General Assembly was asked to take action.

2. Introducing the report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (A/71/289), he said that the Fund allowed thousands of victims worldwide to realize the right to rehabilitation and was an integral part of the United Nations anti-torture architecture. Over 47,000 victims in 81 countries were being assisted by specialized practitioners from rehabilitation centres, non-governmental organizations (NGOs) and legal aid groups through a net investment in direct assistance services totalling over $7.1 million. The Fund had been established 35 years ago, and yet torture remained endemic and was often condoned. The data gathered from project proposals submitted to the Fund showed that an increasing number of victims were children and adolescents. In April 2016, the Fund had convened a two-day expert workshop to address the rehabilitation of child and adolescent victims of torture and the intergenerational transmission of trauma. The need for redress and rehabilitation had become more urgent than ever, and contributions to the Fund were a concrete manifestation of the commitment made by States to eliminate torture and rehabilitate victims under Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Introducing the report of the Secretary-General on the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery (A/71/272), he said that exploitation and slavery-like practices were present in all regions of the world. The unique victim-focused mandate of the Fund provided concrete direct assistance to victims, including legal aid, psychosocial support, medical care and sustainable sources of income. The Fund, however, had been operating on a critically low funding level for several years despite the high number of victims in need, and the report stressed the insufficient level of contributions received. In 2015, the Board of Trustees of the Fund had agreed on a new policy that would prioritize projects providing specialized assistance to victims, in particular legal redress, as well as projects with a focus on women and children, in particular in situations of conflict and humanitarian crises. The Fund aimed to award larger grants and contribute to the achievement of Sustainable Development Goal target 8.7 to eradicate forced labour and end modern slavery and human trafficking.

4. **Mr. Moussa** (Egypt) said that his Government had a number of concerns regarding the guidelines against intimidation or reprisals (San José guidelines). The meetings of Chairs of the human rights treaty bodies were limited to procedural matters and did not encompass substantive issues. The guidelines imposed obligations on States that did not necessarily stem from the treaties they had ratified, for example, allowing the treaty bodies to receive and examine individual complaints without the consent of States. Egypt was monitoring the current phase of the implementation of General Assembly resolution 68/268 with a view to formulating a more comprehensive assessment of the situation prior to the upcoming review of the

effectiveness of the human rights treaty body system in 2020.

5. **Mr. Aliu** (Ghana), speaking on behalf of the Group of African States, said that the African States had ratified most of the human rights treaties, thereby assuming obligations that required expertise in many fields, especially reporting. In order to address gaps in capacity, more technical assistance must be provided to assist Member States in fulfilling their obligations. In that regard, the Group welcomed the capacity-building programmes and subregional training workshops and called for more such opportunities to enhance the quality of reporting by Member States.

6. Resolution 68/268 encouraged the treaty bodies to enhance interaction with States parties, especially during the meetings of the Chairs of the human rights treaty bodies. The Group encouraged the selection of New York as the location of such meetings, because it afforded every country the opportunity to interact. The Group expressed concern that the overall backlog of the treaty body system had increased rather than decreased, due to the additional number of individual communications since the implementation of the resolution, and that the allocation of meeting time had changed, increasing the meeting time for communications and decreasing the meeting time for reviews of State party reports. The Group stressed the need to allocate more meeting time for State party reports, which provided an opportunity for national authorities to present the situation in their country in a holistic manner and to address issues affecting all members of society.

7. The Group continued to caution against any attempts aimed at codifying new norms outside of the intergovernmental process, which extended to the content and implications of the San José guidelines.

8. **Mr. Rabi** (Morocco) said that resolution 68/268 was a milestone in strengthening the treaty bodies. However, it had only been adopted two years earlier, and it was not possible to expect significant advances in such a short amount of time. Nevertheless, Morocco encouraged OHCHR to continue to harmonize the working methods of the human rights treaty bodies, which was crucial to strengthening those mechanisms, and to continue to increase the capacities of developing countries.

9. **Ms. Verstichel** (Belgium), speaking also on behalf of Australia, Austria, Bulgaria, Canada, Chile, Costa Rica, Croatia, Denmark, Finland, the former Yugoslav Republic of Macedonia, Georgia, Greece, Iceland, Latvia, Liechtenstein, Lithuania, Mexico, New Zealand, Paraguay, Poland, Slovakia, Slovenia, Sweden, Switzerland, the United Kingdom and Ukraine, said that the treaty bodies had become more efficient and effective in the past two and a half years, notwithstanding the short implementation period. Nevertheless, all stakeholders must undertake more efforts to elevate the treaty body system to the required level of efficiency and impact by the 2020 review.

10. The treaty bodies were encouraged to continue to increase their efforts towards greater harmonization of their working methods, which would benefit all stakeholders. Although the Chairs of the treaty bodies had made recommendations concerning constructive dialogue, concluding observations and general comments, more progress could be achieved, in particular with regard to the simplified reporting procedure.

11. **Mr. Salama** (Director, Human Rights Treaty Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that, although the 2020 review was important, resolution 68/268 had established a multistep process that included three prior steps, the first of which had been the report on the status of the human rights treaty body system. The report served as a tool to allow the existing meeting time to be adapted to the workload, and there was no cause for concern. Some committees needed less time for reporting but had a high number of individual communications. There were very specific recommendations concerning the harmonization of working methods that would be implemented once the Third Committee took action on the report.

12. He welcomed the recommendation to hold the annual meetings of the Chairs of the human rights treaty bodies in New York because of the importance of direct engagement and agreed that there should be a link between Geneva and New York. The international community had a responsibility to provide the capacity-building programme to the African Group, and he encouraged the General Assembly to take action on the decision in principle to webcast the treaty body sessions. Webcasting was important to accountability,

visibility and the participation of staff who could not travel and was a feasible measure that would enhance the existing capacity-building programme.

13. **Mr. Modvig** (Chair of the Committee against Torture) said that the number of States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had reached 160, with the accession of the Central African Republic. Those States had committed to actively prevent torture through legislation and the implementation of legal anti-torture frameworks. Victims of torture could safely file a complaint and be assured that it would be investigated promptly, impartially and thoroughly, with no risk of violent repercussions, threats or intimidation. In addition, procedures and arrangements for holding and treating people deprived of liberty had to be regularly reviewed by the State to ensure protection against torture. An independent research project undertaken by the Association for the Prevention of Torture had determined that the effective implementation of fundamental legal safeguards upon arrest was the most effective measure to prevent torture, thereby reinforcing previous findings of the Committee.

14. The Committee engaged in constructive dialogue with most States parties to the Convention and provided recommendations. However, 28 States had never submitted a report to the Committee, and seven States had not reported to the Committee for more than a decade, despite their obligation to submit a report every four years. To ensure that constructive dialogue on the prevention of torture could still take place, the Committee had decided to undertake reviews of States parties in the absence of an initial report. In addition, the simplified reporting procedure, which had been agreed to by 92 States parties to the Convention, had been designed by the Committee to ease reporting obligations, and he encouraged the remaining States parties to agree to that procedure. As part of the treaty body strengthening process, the 10 treaty bodies met to exchange best practices to streamline procedures. In 2016, the Committee had met with the Committee on the Elimination of Racial Discrimination.

15. For the third time since its creation, the Committee against Torture had requested a special report. On the basis of information provided by the High Commissioner for Human Rights, the Special Adviser on the Prevention of Genocide and numerous reports from NGOs concerning attacks against the opposition, a special report had been requested from Burundi which, commendably, had been submitted. The Burundian delegation, headed by the Minister of Justice, had attended the first half of the dialogue with the Committee. However, it had not attended the second half of the dialogue, arguing that the review had been based on reports from NGOs that had not been shared, had gone beyond the issues covered by the special report and that there had not been enough time to reply. The Committee had dismissed those accusations, providing Burundi the opportunity to submit its written replies, and stressed its wish to continue the dialogue, in particular in the context of its follow-up to the concluding observations adopted in August 2016. The follow-up procedure to concluding observations now encouraged States parties to submit to the Committee a plan for the implementation of its recommendations in order to strengthen the process through continued dialogue between periodic reports.

16. Since 1988, the Committee had registered 770 individual complaints alleging violation of the Convention concerning 35 States parties. There was a current backlog of 175 complaints pending before the Committee. It was therefore vitally important that the Secretariat should be provided with additional staff resources to assist the Committee. There were still 89 States in which individuals were unable to submit complaints to the Committee, as those States had not yet recognized the competence of the Committee in that regard, thereby limiting the tools available to monitor full compliance with the Convention.

17. The Committee had begun issuing general comments on certain articles of the Convention in order to clarify expectations of States parties. Three general comments had been issued concerning articles 2, 3 and 14 of the Convention, and the Committee had begun the revision of general comment No. 1 on article 3.

18. Upon receiving allegations of the systematic practice of torture within a State party, the Committee had the mandate to institute a confidential inquiry. The Committee had undertaken nine such inquiries and was currently considering others. There were still 14 States parties that had not recognized the competence of the Committee in that regard. He called upon those States that had not ratified the Convention to do so and urged

the States parties to accept all of the procedures of the Convention.

19. The Committee also relied on a close collaboration with civil society organizations, national human rights institutions, national preventive mechanisms and other actors to fulfil its mandate. It was therefore essential that all those cooperating with the Committee and contributing to the fight against torture, especially civil society actors, should be protected from reprisals.

20. **Ms. Kofoed** (Denmark) said that since 2014, when Denmark had helped to launch the Convention against Torture Initiative to encourage universal ratification and improved implementation of the Convention, there had been a steady increase in the number of States parties to the Convention and its Optional Protocol. She wished to know how a universal set of guidelines on interrogation might assist the Committee in its monitoring and assessment of State practice to prevent torture.

21. **Mr. Forax** (Observer for the European Union) said that the European Union was pleased to note the steady increase in the number of countries that had ratified the Convention over the past year and acknowledged the efforts of the Committee to share the expertise of its members by participating in various meetings and seminars, despite its increasing workload.

22. With regard to the decision of the Committee to revise General Comment No. 1 on the principle of non-refoulement, he asked what the procedure would be and what role the Member States would play. He also wondered how the Committee planned to address the increasing number of individual complaints.

23. **Mr. Al-Hussaini** (Iraq) said that a large number of people in Iraq were being violated by the actions of Islamic State in Iraq and the Levant (ISIL) and subjected to many forms of abuse, including rape and torture. The Government of Iraq had documented those atrocities in order to punish the perpetrators. Operations were currently underway in Mosul to clear out groups affiliated with ISIL, and the Government was attempting to provide basic services to the people who would be rescued after the area was liberated. Given that the Committee provided support to the States parties to the Convention, including Iraq, he would like to know what urgent aid could be given to Iraq following the liberation of Mosul.

24. **Ms. Butler** (United Kingdom) said that her delegation was pleased to note the gradual increase in the number of countries that had ratified the Convention against Torture and encouraged the remaining States to do so as well. It would be helpful to discuss the main obstacles that States encountered when considering ratification.

25. **Mr. Modvig** (Chair of the Committee against Torture) said that the implementation of fundamental legal safeguards was one of the most important issues for protection against torture. Standards governing interrogation would provide internationally agreed norms stipulating how to conduct interrogations without violating the Convention and would therefore assist the Committee in implementing the prevention obligations of the States parties.

26. The treaty bodies were in the process of aligning their procedures for the adoption of general comments. Before the final adoption of general comment No. 1, there would be a consultation process, and the Committee would welcome the input of States parties.

27. With regard to the situation of Iraq, constructive dialogue with both the Committee against Torture and the United Nations Voluntary Fund for Victims of Torture would allow Iraq to meet its obligations under article 14 of the Convention and provide appropriate redress to victims.

28. Perhaps the Member States that had not yet taken steps to ratify the Convention worried that they would need to change their general legislation prior to ratification, which was not necessarily the case, or that the reporting obligations would exceed their current capacity and resources. The Convention against Torture Initiative could provide peer-to-peer support to assist Member States, and he looked forward to their continued collaboration with the Committee.

29. **Mr. Evans** (Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), introducing the ninth annual report of the Subcommittee (CAT/C/57/4) and providing updates on its subsequent activities, said that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified or acceded

to in 83 countries, with Cabo Verde, the Central African Republic and Ghana having joined the system in 2016. Accordingly, over half of the States parties to the Convention were also parties to the Optional Protocol. He reiterated his support for the Convention against Torture Initiative led by Chile, Denmark, Ghana, Indonesia and Morocco. The Convention and its Protocol were complementary, and torture prevention was crucial for ensuring that the maximum benefit was obtained from the international mechanisms put in place to address torture and ill-treatment in places of detention. Allowing the United Nations Voluntary Fund for Victims of Torture to present its work to the General Assembly would provide greater focus on torture and its prevention, as well as support and rehabilitation for victims.

30. The Subcommittee was seeking to undertake more field visits in response to the increasing number of States parties to the Optional Protocol. It had conducted eight visits in 2015 and was planning to visit ten countries in 2016. However, the Subcommittee would be unable to increase its workload further given the current level of resources available. As States continued to ratify the Convention, the Subcommittee would continue to fall further away from achieving its benchmark goal to undertake visits every four years. The Optional Protocol provided the most powerful mandate for torture prevention available, and yet the international community continued to fail to provide the means necessary to carry out its purpose. The international community should honour its commitment to torture victims and the prevention of torture by providing proper support to the preventive visits, which could be undertaken cheaply, swiftly and effectively.

31. The Optional Protocol was designed to allow the Subcommittee to conduct unannounced visits to places of detention. Since his last report, some States parties had nevertheless continued to question the scope of the mandate. The Subcommittee would not accept any suggestion that its planned visits should be cancelled or postponed because a State was reluctant for that visit to take place. States were legally obligated to facilitate the visit of the Subcommittee at the time of its choosing, as stipulated in the text of the Convention. The mandate of the Subcommittee extended to any place that it believed a person might be detained on the basis of public authority and was not limited to formal places of detention. The definition was deliberately wide and included places where third parties might be detaining persons under the authority or regulatory oversight of the State. The visits were intended to assess typical conditions, not the temporary improvements to facilities and the treatment of detainees in anticipation of the visit. He urged States parties to respect the principles of the Optional Protocol and gave his assurances that the Subcommittee would do the same, speaking fairly and confidentially about the situation, not in the spirit of condemnation but of cooperation, in order to best serve the interests of detained persons and detention systems.

32. The Subcommittee was doing everything possible to fulfil its mandate to assist the national preventive mechanisms in their work. The number of such mechanisms continued to rise, as did the quantity and quality of their work. Despite its inadequate capacity, the Subcommittee would continue to do its best to address the failure to provide systematic and focused support and technical assistance to States parties and national mechanisms. Many mechanisms were themselves understaffed, lacked resources or had legal mandates falling short of what was required under the Optional Protocol. Several of those problems could be addressed through collaboration.

33. As stated before, post-visit dialogue with States needed to be enhanced. There must be a roadmap for regular contact among State authorities and the Subcommittee to discuss progress with the consideration and implementation of recommendations. The process required fluid, discursive and engaged dialogue in order to be effective, rather than sterile exchanges of formal documentation. Although those changes had proven difficult, the Subcommittee pledged to attempt to work harder and develop the capacity to engage more fully with States in confidential dialogue in fulfilment of its mandate to assist in the implementation of recommendations.

34. The Optional Protocol Special Fund had supported many worthwhile projects to assist in the implementation of recommendations. However, the Fund was in dire need of resources and would almost certainly fail in 2016 unless it received immediate voluntary contributions. It would be the first voluntary fund to fail in such a way. He urged States to give serious consideration to supporting the Fund to

demonstrate that their commitment went beyond rhetoric. A small contribution could go a long way in addressing the most serious violations. The Subcommittee itself strove to make good use of its sessions, but they were congested and overburdened. In its three one-week sessions, it was impossible to consider the reports and follow-up arising from over 50 visits, engagement with 65 national preventive mechanisms, the Special Fund, international processes, jurisprudence and organizational matters. The Subcommittee attempted to work in chambers when possible, but the lack of interpretation services could be discriminatory and prohibit effective participation. It was essential that the Subcommittee should be provided with additional meeting time or interpretation facilities in chambers.

35. Increased pressures on detention and security services contributed to the likelihood of resort to ill-treatment, and increasing concerns over the protection of national security and national boundaries was generating new sources of risk. The Optional Protocol had created an impressive web of preventive mechanisms at the international and national levels, but the international community must be willing to support that system and work in partnership within the United Nations and within regional systems in order to take serious and effective action to prevent torture.

36. **Ms. Kirianoff Crimmins** (Switzerland) said that her delegation would like to hear more about how the Subcommittee could assist States in the establishment of national preventive mechanisms that respected the conditions set forth in the Optional Protocol, their independence in particular. . She wondered whether the growing number of visits to places of detention undertaken by the Subcommittee impeded it from increasing its engagement with national preventive mechanisms. Her delegation commended the Subcommittee for its efforts to optimize its working methods and supported increasing its resources in order to meet its growing workload.

37. **Ms. Butler** (United Kingdom) said that her delegation encouraged all States to sign the Optional Protocol without delay and all States parties to take advantage of the tools available in order to meet their obligations, which included maintaining a dialogue concerning implementation with the Subcommittee. Some States that had not ratified the Optional Protocol noted that they had already established domestic mechanisms. It would therefore be useful to know how the Optional Protocol could complement any national systems already in place.

38. **Mr. Forax** (Observer for the European Union) said that the European Union encouraged all States to sign and ratify the Optional Protocol. Independent national preventive mechanisms were a particularly important tool, and the number of States parties that had still not formally complied with their obligation to establish such a mechanism gave cause for concern. Sadly, no new national preventive mechanisms had been designated within the last year. He wondered whether the Subcommittee had any initiatives in mind to encourage further ratification and better implementation of the Optional Protocol.

39. **Ms. Brodská** (Czech Republic) said that the reporting cycle should not be too long, and with 83 States parties to the Optional Protocol, it seemed that the Subcommittee should visit more States every year. She wished to know how the Subcommittee intended to handle the increasing numbers of States parties while effectively conducting its mandate.

40. **Ms. Kofoed** (Denmark) asked how a universal set of guidelines on interrogation might assist the Subcommittee in the context of its visits to places of detention.

41. **Mr. Evans** (Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) said that he firmly believed that one of the most important elements of the Optional Protocol was the synergy it created between prevention at international and national levels. There were a number of States that had not yet designated a national mechanism or whose mechanism lacked the capacity to act. In order to assist States, the Subcommittee had produced guidelines to outline what should be expected of a national mechanism and how it could best be constructed, bearing in mind the unique situation and specificities of each country. It should therefore be tailored to the legal and practical situations of each country concerned. In addition, the national preventive mechanism should be designated or established within one year of the entry into force of the Convention. It was therefore vital for the Subcommittee to meet with States parties as soon as possible after the ratification

of the Convention in order to establish clear expectations and provide assistance. The Subcommittee would then be well placed to comment on proposals and put States in touch with other States that could provide direct practical guidance and assistance.

42. By joining the international system, national mechanisms could receive support and encouragement, as well as information that might otherwise be unavailable. The Subcommittee could identify where there might be threats to their independence or operational activities and could also facilitate cooperation among national mechanisms in neighbouring countries. Peer-to-peer networks of national mechanisms were being created in many parts of the world and were proving to be extremely beneficial.

43. The Subcommittee was keen to meet with States that were contemplating the ratification of the Optional Protocol, and would gladly explain the process and requirements of establishing a national mechanism. Any signatory State was also welcome to contact the Subcommittee at any time to seek advice. Greater clarity about how investigations could be conducted in a way that respected the rights of the person being questioned would be beneficial and could also contribute to operational effectiveness. In many States, information was sometimes acquired in a way that caused it to be inadmissible in court proceedings because of the exclusionary rule. Clear guidelines would benefit both those being questioned and those doing the questioning, and he looked forward to having further discussions on how such guidelines might be developed.

44. Unfortunately, the Subcommittee did not have the capacity to undertake more visits. More practical resources must be made available to OHCHR to devote to the work of the Subcommittee in order to sustain its work.

45. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that there had been a genuine crisis in international cooperation with his mandate and other special procedures during the past six years. Approximately 50 per cent of States responded to the communications sent out by his Office in accordance with the procedures established for cases of suspected violations of human rights. The country visits were a fundamental part of the mandate and must include visits to institutions historically isolated from the outside world, such as prisons, police stations, psychiatric hospitals and migrant detention centres. Opening those institutions to the scrutiny of independent experts could contribute immensely to the prevention of torture and other ill-treatment. Many countries had refused to invite him or had ignored his requests. Others issued invitations that were later rescinded, often at the last minute.

46. A scheduled visit to Turkey had recently been postponed by the Government; he hoped that his successor could carry out the visit as soon as possible. After a number of postponements, there was still no set date to visit Bahrain or Thailand. In the case of Gambia, the terms of reference that had been agreed had been unilaterally violated by the Government during the visit. Over the course of his mandate, he had issued several requests for invitations to Cuba, India, the Islamic Republic of Iran, Venezuela and Zimbabwe, but had received no response. More recent requests to Egypt, Saudi Arabia and the United Arab Emirates had also gone without reply. In other cases, he had received invitations with inadequate terms of reference, which would severely undermine the credibility of the protection mechanisms. The Russian Federation had issued an invitation on the condition that interviews with detainees must be authorized on a case-by-case basis. The United States of America had issued an invitation to Guantanamo for a briefing by its authorities and for a tour of some parts of the detention centre under the express condition that he could not speak with any detainee. Since 2012, he had also been requesting an invitation to visit prisons within United States territory to investigate issues related to solitary confinement, but had only received denials from several states and unacceptable restrictions for a visit to a federal maximum-security prison.

47. Follow-up visits were also important, in order to verify that recommendations had been implemented. He had not been invited to follow-up visits to Mexico or Morocco and Western Sahara. Given the importance of evaluating the implementation of recommendations, he was presenting follow-up reports concerning Kyrgyzstan and Mexico without having conducted the follow-up visit. He thanked the States that had allowed

him to visit and hoped that the recommendations had been useful.

48. The Office of the Special Rapporteur had contributed to the development of a normative framework applicable to torture and ill-treatment, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Istanbul Protocol. It had broadened the conversation on torture to encompass situations unrelated to detention, such as gender violence, the denial of abortion and certain types of painful therapies that were not justified by medical need or the free and informed consent of the patient. The Office had also advanced the discussion on the detention of children and the inclusion of a gender perspective in the prevention of torture in order to determine how to provide remedies that would address the unique way in which women, girls, boys and lesbian, gay, bisexual, transgender and intersex persons suffered torture and ill-treatment.

49. Introducing his interim report (A/71/298), he said that it focused on the need for a universal protocol for interviews of suspects, witnesses and victims in order to prevent the use of torture and other ill-treatment and coercive measures in the context of criminal investigations. There was no historical or scientific evidence to support the idea that torture was an effective way to obtain information. In fact, science and experience in the criminal justice system had shown that ill-treatment and coercion were counterproductive. They damaged areas of the brain related to memory, affected mood and cognitive function, weakened and disoriented subjects and made them more likely to invent memories, giving rise to false confessions and unreliable information. Torture, ill-treatment and coercion also had harmful effects on the mental health of the interviewers themselves.

50. Following the model of the Nelson Mandela Rules and the Istanbul Protocol, there should be a public consultation process with the participation of States, civil society and other relevant stakeholders to develop a universal protocol for interviews, which would outline a detailed interviewing model that fully respected international human rights law and the prohibition of torture, ill-treatment and coercion. It should be non-coercive, ethically sound, research-based, empirically founded and facilitate the elicitation of accurate and reliable information. National legislation should incorporate the protocol, which should be universally applicable both de jure and de facto. It should be used without exception in all interviews carried out by all agents of the State working in security, the justice system, the military, intelligence and administration, as well as by private contractors and others acting on behalf of the State. It should apply in the context of armed conflicts and beyond borders. The protocol should help to move beyond accusatorial models of questioning, which tended to be confession driven and characterized by a de facto presumption of guilt and the use of confrontation and manipulation. Threats, inducements, misleading practices, protracted or suggestive questioning and the use of drugs or hypnosis were examples of problematic practices. Demeaning or condescending comments or accusations based on individual qualities or cultural identities were also of concern.

51. The PEACE model of interviewing adopted in 1992 in England and Wales could serve as a reference for the protocol. Interviewers must seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; analyse the information obtained against previously available information or evidence; and evaluate each interview with a view to learning and developing additional skills. Interviews were a complex task that should be undertaken by specialists with the highest level of professionalism who were adequately trained in the prevention of torture and in interviewing techniques that respected human rights.

52. It was essential to have due process guarantees to ensure the rights to a fair trial, not to be compelled to testify against oneself or to confess guilt and receive legal counsel from the moment of arrest, especially before being interviewed. Every detained or arrested person must be informed of their rights, especially the right to remain silent. Information should be provided in a manner that was sensitive to age, gender and

culture and corresponded to the needs of vulnerable persons and in a language, means, mode and format accessible to and understood by them. Means of verification and documentation that the information had been provided must be established. The protocol would make it possible to identify the special needs of interviewees, including children, women, persons with disabilities, persons belonging to minorities or indigenous groups and non-nationals, including refugees, asylum-seekers and stateless persons. The recording of interviews was a fundamental safeguard against torture, ill-treatment and coercion. Every reasonable effort must be made to record interviews, by audio or video, in their entirety, especially in the context of detention and criminal justice. Where circumstances precluded or when the interviewee objected, the reasons should be stated and a comprehensive written record of questioning must be kept. Evidence from non-recorded interviews should be excluded from court proceedings. States were obligated to guarantee the availability of prompt, independent, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter, as soon as a detainee entered a custodial or interview facility and upon each transfer. Examinations should be carried out pursuant to allegations of mistreatment or any sign that mistreatment might have occurred, in accordance with the Istanbul Protocol.

53. In order to prevent the use of torture, the protocol should reiterate the obligation of States to combat impunity and provide remedies for torture and ill-treatment committed during questioning. Statements and evidence obtained through torture, ill-treatment or any other kind of coercion should be inadmissible in any trial, unless they were used against the presumed perpetrators. National legislation should only accept confessions made in the presence of an independent lawyer and only when confirmed before a judge.

54. He urged States to begin a consultation process to design the universal protocol, in collaboration with regional and international human rights mechanisms, civil society and experts and based on the fundamental principles of international human rights law, the prohibition of torture and ill-treatment, the presumption of innocence and the search for truth.

55. **Mr. Wheeldon** (United Kingdom) said that the United Kingdom unreservedly condemned the use of torture. It would continue to work with its partners towards the eradication of the practice through the universal ratification and implementation of the Convention against Torture and its Optional Protocol.

56. **Mr. García Moritán** (Argentina) said that his delegation supported conducting a broad public consultation in order to design a protocol to prevent the use of torture in interviews. He asked the Special Rapporteur to identify the main obstacles in the application of such a protocol and how existing mechanisms could be strengthened to increase awareness of related human rights violations.

57. **Ms. Rasheed** (Observer for the State of Palestine) said that the right to be free from torture and ill-treatment was a rule of customary international law and a peremptory norm that applied to all States at all times, including during the questioning of detainees. In complete disregard of that rule, one of the many extreme forms of Israeli violence against the Palestinian civilian population in the Occupied Palestinian Territory had been the use of torture in prisons, for both repressive and interrogation purposes. Israel was the only State in the world that had codified and legalized the use of torture in interrogation, in contravention of its obligations under international humanitarian law. Those unlawful practices were exacerbated by a culture of impunity and a failure to ensure accountability and provide adequate remedies. Given that Israeli legislation did not criminalize torture, she wondered what measures could be taken to hold the occupying Power accountable and compel it to put end the systematic torture of Palestinian detainees and prisoners, including durin interrogations.

58. **Ms. Vydmantas** (United States of America) said that her delegation supported focusing attention on improving investigative techniques among law enforcement agencies to reduce sole reliance on confessions, where such reliance increased the risk of torture. It would be interesting to know how States could better cooperate to share best practices on improving investigative and other law enforcement techniques and what best practices had been identified among States that were making new efforts in that area.

59. The United States had engaged in discussions with the Special Rapporteur regarding his request for a country visit and regretted that it had not been possible

to facilitate a visit on mutually agreed terms, but remained open to discussing the terms for an official visit by his successor. Requests to visit detention facilities were considered on a case-by-case basis, and she noted that other United Nations mandate holders had visited detention facilities in the country.

60. **Mr. Hatipoglu** (Turkey) said that his country had been taking steps aimed at further strengthening democracy, promoting respect for human rights and fundamental freedoms and consolidating the rule of law and the independence of the judiciary. Combating torture and ill-treatment remained a priority for his Government, as evidenced by its zero-tolerance policy. Turkey was a party to both the Convention against Torture and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and cooperated constructively with their respective international monitoring bodies. As a party to the Optional Protocol to the Convention against Torture, in 2012 Turkey had designated a human rights and equality institution as the national prevention mechanism.

61. Turkey duly maintained close, constructive cooperation with the special mechanisms of international organizations, fulfilling its reporting obligations to the Committee against Torture and upholding the spirit of collaboration with the Special Rapporteur. The Government was working to reschedule a visit with the incoming Special Rapporteur and was fully committed to taking effective legislative, administrative and judicial measures to prevent acts of torture as defined in the Conventions to which Turkey was a party. Its cooperation with the relevant United Nations bodies would continue unabated.

62. **Ms. Nescher-Stuetzel** (Liechtenstein) said that a prominent human rights lawyer and activist in Egypt, which was a party to the Convention against Torture, had been charged with several offenses for working on an anti-torture bill that would bring the national legislation in line with the Convention, and the judges working with him were being investigated. She asked the Special Rapporteur what measures he had taken or could suggest to his successor in order to ensure that the legislature in Egypt and other countries complied with the Convention, in particular when they were parties to the Convention and had accepted the recommendations of the universal periodic review.

63. **Mr. Habib** (Indonesia) said that his delegation took note of the proposal to establish a universal protocol for interviews. The multilateral process for its development must be transparent, accountable, fair and balanced and should include the collaboration of all parties concerned, including law enforcement and other investigative bodies. Indonesia appreciated the continued focus on the persistent use of unlawful and improper interviewing practices in counterterrorism and remained committed to upholding human rights in that context. He wondered how the international community could explain to law enforcement officials and other investigative bodies that the proposed protocol was both important for the promotion and protection of human rights and essential in discharging their duties and keeping societies safe.

64. **Ms. Kofoed** (Denmark) said that, at the thirty-first session of the Human Rights Council, Denmark had put forth a resolution on torture prevention in the early stages of police custody and pretrial detention, which had been unanimously adopted. She wished to know what role the Convention against Torture Initiative and similar organizations could play in the development of the universal guidelines for investigative interrogation.

65. **Ms. Karimdoost** (Islamic Republic of Iran) said that her delegation took note of the proposal to develop a universal protocol to identify standards for non-coercive interviewing methods and procedural safeguards. She asked the Special Rapporteur to what extent the universal protocol could cover police brutality, the ill-treatment of migrants and refugees and the human rights violations committed in armed conflicts and wars against terrorism.

66. **Ms. Diedricks** (South Africa) said that victims of human rights violations had often found themselves without recourse, remedies or access to rehabilitation. South Africa highly valued the work of the International Rehabilitation Council for Torture Victims and continued to make financial contributions to the United Nations Voluntary Fund for Victims of Torture. She would appreciate information on how best to deal with torture committed by non-State actors.

67. **Mr. Forax** (Observer for the European Union) said that States and other relevant stakeholders should engage in a broad public consultation on the development of a universal protocol for interviews. It would be helpful to elaborate on the development process and the role of non-State stakeholders, including the mandate of the Special Rapporteur.

68. **Ms. Kirianoff Crimmins** (Switzerland) said that her delegation welcomed the proposal to develop a universal protocol for interviews, as many States flouted existing normative frameworks. She wondered how the protocol could improve respect for those frameworks and requested additional information concerning the consultation process.

69. **Ms. Enersen** (Norway) said that the widespread use of torture called for political leadership. The important underlying structural reasons for the use of torture and ill-treatment, such as impunity, the malfunctioning of the administration of justice and the lack of respect for legal safeguards, must be addressed. Her delegation supported the proposal to develop minimum standards and rules on investigative interviewing, but wondered whether there were other ways and means to pursue that goal, rather than a universal protocol.

70. **Ms. Matar** (Bahrain), in reference to the visit of the Special Rapporteur to the Kingdom of Bahrain, said that her Government was committed to cooperation with the United Nations, but retained its sovereign right to determine when to extend invitations to Special Rapporteurs. The Minister for Foreign Affairs had met with the Special Rapporteur during the twenty-fifth session of the Human Rights Council and had conveyed his concern that the visit might undermine work to implement the recommendations of the Bahrain Independent Commission of Inquiry and create a second narrative that would polarize society at a critical time when reconciliation was most needed. In addition, there had not yet been enough clarity on the terms of reference of the visit, and her Government was deeply concerned about the politicization of the special procedures, in particular the public statements made by the Special Rapporteur, which prejudged the situation on the ground and appeared to have been made without any investigation or verification. In 2016, Bahrain had submitted its report to the Committee against Torture. Nevertheless, the Government encouraged and welcomed further bilateral consultations with the Special Rapporteur, should the need arise.

71. **Mr. Ruidiaz Perez** (Chile) said that vulnerable persons faced an increased risk of torture and ill-treatment, especially when deprived of liberty or undergoing questioning. The situation of lesbian, gay, bisexual, transgender and intersex persons was exacerbated in States that criminalized their sexual orientation or gender identity. He wondered what key measures could be adopted within the proposed guidelines and protocols to lessen the risk of torture and ill-treatment for members of sexual minorities.

72. **Mr. Méndez** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that public opinion was the biggest obstacle to the effective prohibition of torture. Many people felt that torture was inevitable, necessary and effective and helped to prevent crime. There was also a tendency to believe that the prohibition of torture did not apply to certain crimes, such as terrorism and organized crime. However, international human rights law was very clear that there were no exceptions. The guidelines proposed in the report made no change to the existing normative framework for human rights or the prohibition of torture. The goal was simply to provide more concrete details on the prohibition of ill-treatment in the course of criminal investigations and questioning. It would not require fundamental changes to national legislation, but it would require a cultural change in those bodies that carried out the law. That change could be brought about by involving law enforcement officials from the beginning of the process and putting them in contact with their peers in other countries so that they could see the effectiveness of investigations based on the proposed model. In fact, he had based his proposal on discussions with investigators and interviewers and felt that the exchange of experiences would convince officials to change the way in which they combated crime.

73. The generic model described in the report was already practiced in many countries. It was not, therefore, theoretical or beyond the capacities of States, nor did it depend on resources from the State. All that was needed was the political will to combat crime effectively while respecting human dignity. The guidelines would be useful both for States and in

international law, where they could serve as a model for comparison. The report merely advocated for the guidelines but did not stipulate what form they should take or what process should be used. He believed that sharing best practices would be a key component and hoped that the process would involve the exchange of experiences among all States and sectors, with contributions from experts and civil society.

74. He had envisioned the guidelines to be similar to the Minnesota Protocol, the Nelson Mandela Rules and the Istanbul Protocol. Although they were considered soft law, each was very elaborate and authoritative. The guidelines or protocol should be developed with broad participation, especially from the Committee against Torture, the Subcommittee on Prevention of Torture, the Human Rights Council, as well as regional mechanisms, such as Inter-American Commission on Human Rights, the European Council and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. There was much experience that could guide the process to develop the guidelines for interviews. If they would agree to do so, the countries that led the Convention against Torture Initiative could design it. The most important aspect would be to have broad discussion so that all parties would take ownership of the final result and therefore be inclined to implement the guidelines effectively.

75. With regard to the non-criminalization of torture, States were obligated to criminalize torture under common law and the Convention against Torture, and the definition of torture used in national legislation must align with that of the Convention. With regard to the visit to Turkey, he was pleased to hear that Turkey was willing to extend an invitation to his successor and hoped that the visit could be undertaken soon.

76. Among measures taken when he was not invited to visit a country were communications sent by his Office. Although it only received responses to half of them, he maintained actively engaged and intervened in any way possible. Communications were only sent after his Office had conducted very thorough research with the available information and there was prima facie evidence that the complaint was credible.

77. With regard to non-State actors, the prohibition of torture was governed by the Geneva Convention. Torture in armed conflict had always been a part of his mandate, and torture committed by non-State actors fell under his mandate in certain situations, for example, when they acted as quasi-State entities and when the State was held responsible for not taking steps to protect people who were vulnerable to torture. Under those circumstances, his mandate had acted on issues of domestic violence and when women were denied reproductive services. International law, however, did not provide guidelines for his mandate to act in all cases relating to non-State actors.

78. **Mr. Salvioli** (Chair of the Human Rights Committee), introducing the annual report of the Human Rights Committee (A/71/40), said that the language of human rights, through the treaty bodies, could provide a counterbalance to torture, discrimination, violence against women and the lack of protection and vulnerability of migrants, which remained a concern that could only be addressed by working together. He called on the Member States to give serious consideration to how they could assist in changing that deplorable reality by strengthening the Committee and supporting its decisions.

79. There had been advances in the implementation of the International Covenant on Civil and Political Rights. Many States requested and then implemented the recommendations of the Committee and were engaging more with civil society. They had paid compensation to victims, amended legislation and granted residence permits to petitioners who were at risk of being tortured if returned to their countries of origin. Nevertheless, States must be more committed to implementing the decisions of the Committee in order to see real change on the ground.

80. In June 2016, the first joint meeting was held between the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. It had explored the complementarity of the two Committees, the relevance of the two Covenants and opportunities for collaboration.

81. Through General Assembly resolution 68/268, the Human Rights Committee had received extra resources and financing which had provided an additional two and a half weeks of meeting time a year. With regard to reporting, the Committee had exceeded the target set in the resolution to increase the number of reports reviewed per session and no longer had a backlog. It had issued views on 115 individual communications

under the Optional Protocol. As the number of cases being registered continued to increase each year, the Committee did have a backlog in that area.

82. The treaty body review process provided an opportunity to consider the future of the two Covenants and their Committees. Although the implementation of General Assembly resolution 68/268 was globally positive, a number of areas required additional resources. The Committee had been granted additional meeting time but it had not been matched by a corresponding increase in human resources to prepare the necessary preliminary documentation. It was therefore unable to use the additional meeting time efficiently, and a large backlog of communications remained.

83. He congratulated the Secretariat for its extraordinary work under extremely difficult conditions. The policy of staff rotation had negatively impacted the work of the Committee, as the institutional memory and legal expertise developed over time were lost. Webcasting was an important service that improved the visibility and accessibility of the treaty body system and had been developed with outside funding acquired by OHCHR. In order to maintain that service beyond June 2017 and make it accessible and all United Nations languages, funding must come from the regular budget.

84. Follow-up procedures were at the centre of the International Covenant on Civil and Political Rights. They allowed for the identification of good practices and the collection of quantitative indicators to measure State engagement and provided States with an opportunity to take corrective measures prior to the next review. Non-reporting and late reporting by States continued to be an issue. Without the reports, the Committee was not aware of the challenges faced by States and could not provide guidance. He encouraged the 50 States that were at least five years overdue with their initial or periodic reports to submit them as soon as possible. Technical assistance was available from OHCHR, and all States could use the simplified reporting procedure.

85. He called on States to comply with the good-faith obligations made under the Optional Protocol and implement the recommendations of the Committee. He expressed concern that some States parties to the Second Optional Protocol had announced their intention to reintroduce the death penalty and encouraged all States parties to take their obligations under the treaties seriously and refrain from taking retrogressive measures that would only undermine the human rights progress that had been achieved.

86. **Mr. García Moritán** (Argentina) said that it would be helpful to further discuss the impact of the lack of sufficient resources in personnel and translation services on the substantive work of the Committee. He wondered what the next step would be in the development of the general comment on article 6, concerning the right to life, and when it would be issued.

87. **Mr. Forax** (Observer for the European Union) said that the European Union appreciated the continued efforts of the Committee to accelerate its work through the revision of its rules of procedure. It would be interesting to hear more about the expected results and whether there were any specific issues that the working group wished to address. He asked how the European Union could assist in strengthening the treaty bodies.

88. **Ms. Nescher-Stuetzel** (Liechtenstein) said that many States had included provisions on aggressive wars or the illegal use of force in their national criminal codes, and the Rome Statute of the International Criminal Court listed the crime of aggression among its four core crimes. She asked how the Committee planned to reflect on the relationship between illegal wars and the right to life in the general comment under consideration.

89. **Ms. Węgrzynowska** (Poland) she said that her Government appreciated the cooperation of the Committee during the recent review of its implementation of the Covenant. The opinions expressed by the Committee would be analysed in detail and taken into consideration in future Government action. It would be helpful to hear about the relationship between the Committee and other United Nations bodies and the potential for further synergies, cooperation and strengthening of relations.

90. **Mr. Salvioli** (Chair of the Human Rights Committee), regarding the delay in reporting, said that the Committee would examine States in the absence of a report; however, it was more beneficial to have information from the State. Those facing difficulty in complying with their obligation to present reports

could request technical assistance. The reduction in personnel had a significant impact on the work of the Committee. It was completely up to date and had the capacity to do more, but lacked the pre-session documentation from the Secretariat. In addition, the lack of translation services was harmful because it led to misunderstandings, as the experts must have access to the best possible resources when evaluating States.

91. Once the Committee completed the first reading of its general comment on the right to life, all States would be invited to provide input on the draft. He assured the representative of Liechtenstein that all guarantees of the right to life were reflected in the draft general comment. The international community could help the Committee to strengthen the treaty bodies by fully participating in the process. The Committee was very well connected to the other treaty bodies and also met with other United Nations bodies and special procedures, as well as regional organizations.

92. **Mr. Moussa** (Egypt), speaking in exercise of the right of reply, said that his delegation was startled by the false accusations and baseless claims levied against its Government, which had unfortunately been based on unverified, biased information. He reminded delegations that the current session was not the proper venue for raising such issues. His Government had always called for non-politicization, non-selectivity and impartiality when dealing with human rights in the international agenda, and the statement made had displayed a lack of understanding of the case. The case was being brought before an independent Egyptian court, the person being cited had not been licensed to conduct such activities, and his NGO had not been registered as such in Egypt. Those were the reasons for the trial. He urged all delegations to respect the rule of law and the independence of the judicial procedures of Egypt and to avoid politicization and polarization of the human rights agenda in order to allow for a constructive and fruitful dialogue.

The meeting rose at 1.05 p.m.